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30 CFR Ch. VII (7–1–11 Edition)

(i) The requirements for existing and new coal mine waste disposal facilities; and

(ii) The requirements to restore the approximate original contour of the land.

(f)(1) Any person conducting coal exploration on non-Federal and non-Indian lands on or after the date on which a State program is approved or a Federal program implemented, shall either file a notice of intention to explore or obtain approval of the regulatory authority, as required by 30 CFR part 772.

(2) Coal exploration performance standards in 30 CFR part 815 shall apply to coal exploration on non-Federal and non-Indian lands which substantially disturbs the natural land surface 2 months after approval of a State program or implementation of a Federal program.

(Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*)

[44 FR 15316, Mar. 13, 1979, as amended at 44 FR 77446, Dec. 31, 1979; 48 FR 6935, Feb. 16, 1983; 48 FR 44391, Sept. 28, 1983; 48 FR 44779, Sept. 30, 1983; 49 FR 38477, Sept. 28, 1984; 54 FR 13822, Apr. 5, 1989; 65 FR 79663, Dec. 19, 2000]

EFFECTIVE DATE NOTE: A document published at 44 FR 67942, Nov. 27, 1979, temporarily suspended §701.11(d) (1) and (2), which were redesignated as paragraphs (e) (1) and (2) at 49 FR 38477, Sept. 28, 1984, insofar as it may be read to retain discretion in the regulatory authority to grant an exemption from reconstruction of existing structures after making the findings in 30 CFR 773.15.

PART 702—EXEMPTION FOR COAL EXTRACTION INCIDENTAL TO THE EXTRACTION OF OTHER MINERALS

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AUTHORITY: 30 U.S.C. 1201 *et seq.*, as amended.

SOURCE: 54 FR 52120, Dec. 20, 1989, unless otherwise noted.

§ 702.1 Scope.

This part implements the exemption contained in section 701(28) of the Act concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale.

§ 702.5 Definitions.

As used in this part, the following terms have the meaning specified, except where otherwise indicated:

(a) *Cumulative measurement period* means the period of time over which both cumulative production and cumulative revenue are measured.

(1) For purposes of determining the beginning of the cumulative measurement period, subject to regulatory authority approval, the operator must select and consistently use one of the following:

(i) For mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977, or

(ii) For mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area, whichever is earlier.

(2) For annual reporting purposes pursuant to §702.18 of this part, the end of the period for which cumulative production and revenue is calculated is either

(i) For mining areas where coal or other minerals were extracted prior to April 1, 1990, March 31, 1990, and every March 31 thereafter; or

(ii) For mining areas where extraction of coal or other minerals commenced on or after April 1, 1990, the last day of the calendar quarter during which coal extraction commenced, and each anniversary of that day thereafter.

(b) *Cumulative production* means the total tonnage of coal or other minerals extracted from a mining area during

the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total is governed by § 702.16.

(c) *Cumulative revenue* means the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

(d) *Mining area* means an individual excavation site or pit from which coal, other minerals and overburden are removed.

(e) *Other minerals* means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material.

§ 702.10 Information collection.

The collections of information contained in §§ 702.11, 702.12, 702.13, 702.15 and 702.18 of this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-0089. The information will be used to determine the initial and continuing applicability of the incidental mining exemption to a particular mining operation. Response is required to obtain and maintain the incidental mining exemption in accordance with section 701(28) of the Act.

Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer, OSM Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; and to the Office of Management and Budget, Paperwork Reduction Project (1029-0089), OMB, Washington, DC 20503.

§ 702.11 Application requirements and procedures.

(a)(1) Any person who plans to commence or continue coal extraction after April 1, 1990, under a Federal pro-

gram or on Indian lands, or after the effective date of counterpart provisions in a State program, in reliance on the incidental mining exemption shall file a complete application for exemption with the regulatory authority for each mining area.

(2) Following incorporation of an exemption application approval process into a regulatory program, a person may not commence coal extraction based upon the exemption until the regulatory authority approves such application, except as provided in paragraph (e)(3) of this section.

(b) Existing operations. Any person who has commenced coal extraction at a mining area in reliance upon the incidental mining exemption prior to April 1, 1990, in a State with a Federal program or on Indian lands, or prior to the effective date of counterpart provisions in a State program, may continue mining operations for 60 days after such effective date. Coal extraction may not continue after such 60-day period unless that person files an administratively complete application for exemption with the regulatory authority. If an administratively complete application is filed within 60 days, the person may continue extracting coal in reliance on the exemption beyond the 60-day period until the regulatory authority makes an administrative decision on such application.

(c) Additional information. The regulatory authority shall notify the applicant if the application for exemption is incomplete and may at any time require submittal of additional information.

(d) Public comment period. Following publication of the newspaper notice required by § 702.12(g), the regulatory authority shall provide a period of no less than 30 days during which time any person having an interest which is or may be adversely affected by a decision on the application may submit written comments or objections.

(e) Exemption determination. (1) No later than 90 days after filing of an administratively complete application, the regulatory authority shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt